EDD INFORMATION SHEET

Serving the People of California

MULTI-STATE EMPLOYMENT

When an employee performs services in California as well as in another state(s), the question as to which state has jurisdiction for coverage of an employee's services is determined by the application of four tests (refer to Sections 602 and 603 below). These tests, which are similar to provisions of the laws of all other states, are applied in descending order to determine whether the employee services are subject to employment taxes in California. The four tests are applied to the employee's work situation and not to the employer. An employee must perform some services in a state before the tests can be applied to allocate the employee's entire services to that state.

Explanation of Employment Sections 602 and 603 of the California Unemployment Insurance Code (CUIC)

Sections 602 and 603 of the CUIC, similar to the provisions of other states' laws, provide for the application of four tests to determine if services of employees are considered subject to California law for Unemployment Insurance, Disability Insurance and Employment Training Tax. These uniform provisions prevent overlapping coverage when an employee performs services in more than one state for a single employer. Application of a test must result in reporting wages to California or another state, or that test does not apply. An individual's services outside of California cannot become subject to California law unless some portion of the services are rendered in this state. These tests are applied to each employee, not the employer, in descending order:

(1) Localization

An employee's services are "localized" in California, and therefore considered subject to California employment law, if all or most of the employee's services are performed in California with only incidental services performed elsewhere, for example, where the out-of-state service is temporary or transient in nature, or consists of isolated transactions. Where the service performed outside of California is either permanent, substantial, or unrelated, it cannot be treated as localized in California.

(2) Base of Operation

If test (1) does not apply in any state, services are considered subject to California employment if some of the services are performed in California and the employee's own and only "base of operations" for all of his or her services is in California. "Base of operations" is defined as a more or less permanent place from which the employee starts work and customarily returns to receive employer's instructions, to receive communications from customers or others, to replenish stocks or supplies, to repair equipment, or to perform other functions relating to the rendition of services.

(3) Place of Direction and Control

If tests (1) and (2) do not apply in any state, an employee's services are considered subject to California employment law if some of the services are performed in California and the place from which the employer exercises basic and general direction and control over all the employee's services is in California.

(4) Residence of Employee

If tests (1), (2), and (3) do not apply in any state, an employee's services are considered subject to California employment law if some services are performed in California and the employee's residence is in California. Residence means having a more or less permanent place of abode. It is more than a mere transient stopover, but does not require the intent necessary to establish a permanent residence in the domiciliary sense.

Personal Income Tax Withholding

For purposes of California personal income tax withholding wages, paid to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed within this state, are taxable.

Employer Required to Withhold Income Taxes of Other States

Employers may need to withhold from the same wage payments made to a California resident both the California income tax and the income tax of another state, political subdivision or the District of Columbia.

In such cases, the employer will make the deductions required by the other jurisdiction, and will:

1. Additionally, withhold for California the amount by which the California deductions exceeds the deduction for the other jurisdiction; or

2. Make no California withholding deduction if the deduction for the other jurisdiction is equal to or greater than the deduction for California.

Examples

Wages paid to a California resident who works in Louisiana for six months and otherwise worked in California, are subject to California for all periods. However, the employer may or may not have to withhold PIT. If the deductions for Louisiana exceed those that would be required for California, no California PIT is required to be withheld.

If the deductions for Louisiana are less than those of California, the employer should withhold the Louisiana amounts and pay California the difference between that and the amounts required by California.

Wages paid to a California resident who works for a Texas company, but has only worked for this company in Germany, would normally be subject to California PIT withholding.

Wages for Nonresidents

The wages a nonresident earns in California are subject to California PIT withholding. The amount of wages subject to California PIT withholding is that portion of the total number of working days employed within California to the total number of working days employed both within and without California.

Example

Assume there are ten working days within the pay period and a non-resident employee works six of those days in California and four days in New Mexico. California PIT withholding is required for 6/10 of the employee's earnings for the pay period.

See DE 231FE - Foreign Employment and Employment on American Vessels or Aircraft for information about foreign employment.